IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Case No. F.A.O No. 623 of 1988
& Cross-Obj.No.23-CII of 1989

Date of decision : 23.08.2006

Anup Singh .. Appellant
Versus
Lachhman etc. .. Respondents.

Present: Mr.Harmandeep Singh, Advocate
for Mr. anil Rathi, Advocate
for the appellant.

Mr. Deepak Suri, Advocate
...

RANJIT SINGH, J

Anup Singh, appellant, who had suffered injuries in Motor accident, is aggrieved against the quantum of compensation awarded to him and so also against the finding of the Tribunal whereby he has been held liable for contributory negligence to the extent of 50 per cent in causing the accident in which he had suffered injuries.

Claiming himself to be a young athlete, the appellant has pleaded that this accident had brought an abrupt end to his athletic career and changed his life as he was disabled to the extent of 50 per cent due to the accident. He had claimed a compensation of Rs.5,00,000/-. The Tribunal, on the other hand, assessed a sum of Rs.45,000/- as compensation in this case and, accordingly, directed payment of Rs.22,500/- on the ground that the appellant had equally contributed toward the accident. As per the Insurance Company, the accident took place totally due to the fault of the appellant. It has also contested the quantum of compensation awarded in this case pleading that it is on the higher side.

On 24.6.1986, the appellant was riding a motor-cycle with Amar

Nath as a pillion. They were proceeding to attend a marriage at Village Mokhra via Rohtak. Their motor-cycle was followed by Car/Matadors etc. in which a marriage party was proceeding. When the appellant was 10-12 km. short of Rohtak, a Haryana Roadways Bus was found proceeding ahead of the motor-cycle . A truck bearing registration no. HYG-2237 approached from the opposite direction. It is stated that the truck was driven at a very high speed in a rash and negligent manner. After crossing the Haryana Roadways Bus, the truck was statedly swerved towards its right and as a result it hit the motor-cycle. The appellant and the pillion rider received grievous injuries. After the accident, the truck driver fled from the scene leaving the truck there. The appellant and the injured were removed to the Medical College and Hospital, Rohtak. They were further taken for treatment to Delhi where the appellant was admitted in Safdarjang Hospital. He had to undergo two operations and other major surgeries for adjustment of knee, ankle and other fractured bones. He filed a claim petition seeking Rs.5,00,000/- as compensation for the injuries suffered by him.

The respondent-truck driver and the Insurance Company have filed separate written statements to the claim petition filed by the appellant. It is their common case that Haryana Roadways Bus was seen coming from the opposite direction by the truck driver. There was a motor-cycle behind the Haryana Roadways Bus which was not visible to the truck driver. As per the stand of the respondents, the motor-cyclist, all of a sudden appeared from behind the bus and seeing the truck, became perplexed. He, thus, lost control of the motor-cycle and in the process, hit front right bumper of the truck. It was accordingly urged that there was no negligence on the part of the truck driver and this accident took place totally due to the fault of the appellant, motor-cyclist. Ten witnesses were examined on behalf of the appellant. Respondent no.1-Lachhman, truck driver appeared as a witness in support of his case and also examined another witness, Surinder Kumar. Having regard to the contrary version put on record through

various witnesses, the Tribunal held that drivers of both the vehicles were equally responsible for this accident to the extent of 50 per cent. Proceeding further, the Tribunal assessed total compensation awardable in this case as Rs.45,000/- and accordingly allowed the claim to the extent of Rs.22,500/- as compensation having regard to the contributory negligence.

I have heard the counsels for the parties.

Counsel for the appellant has raised various contentions to attack the finding of the Tribunal whereby the appellant was held to have contributed towards this accident. Referring to the evidence of different prosecution witnesses including that of respondent-driver, Lachhman, it has been submitted that the accident took place due to the negligence of the truck driver in swerving it towards the right which has resulted into the accident. It has also been pointed out on the basis of evidence of Amar Nath, PW-7 and appellant, PW-5 that the truck had struck against the motor-cycle after having crossed the bus. It has come in the cross-examination of truck driver, Lachhman, RW-1 that only two vehicles can cross at the place where the accident took place. This would show that while crossing the bus, the truck approaching from the opposite direction was perforce required to be taken towards one side. Thereafter, the same was required to be brought on to the right after crossing the bus. It can, thus, be reasonably assumed that the truck driver had swerved the truck towards his right to bring it to the Pucca portion of the road. This fits into the line of evidence given by the appellant,PW-5 that the accident took place when the truck driver swerved the same towards its right side. It is also noticeable that the motor-cycle was following the bus and was bound to be at normal speed. The evidence of truck driver, RW-1 also shows that he had seen the motor cycle while approaching from the opposite direction behind the bus. The site plan of the accident which was exhibited on the record and so also the photographs would show that the accident took place when the motor cycle was on its proper side. It cannot, thus, be said that the appellant had not

contributed in this accident. This can further be seen from the evidence of RW-1 wherein he had admitted that when the motor cyclist struck against the bumper of his truck, at that time, his truck had just crossed the rear wheels of the bus which was coming from opposite side. This evidence again is in line with the version of appellant-PW5 that the truck had hit the motor cycle when the driver had swerved it to bring the same on to the road after crossing the bus. It is in the evidence of truck driver that he had seen the motorcycle coming behind the bus from which he later attempted to resile. I am of the view that the finding of the Tribunal that the accident took place on account of negligence on the part of both the drivers, cannot be sustained. I would, as such, set aside this finding of the Tribunal and would rather hold that the accident took place on account of negligence on the part of the truck driver, Lachhman-respondent and there was no negligence or rashness on the part of appellant-Anup Singh which could have contributed towards this accident.

Counsel for the appellant has also argued that the quantum of compensation assessed and awarded is on the lower side. He has drawn my attention to the fact that a sum of Rs.5,00,000/- had been claimed as compensation. The evidence on record reveals that the appellant had sustained injuries on the right arm, right leg which was crushed. It is also on record that he had remained admitted in the hospital and had to be shifted to Delhi. He was hospitalized for a period of 105 days. He was under the treatment even at the time when he appeared as a witness in support of his claim. The fact that the appellant had remained under a great shock and pain for a long period and was also deprived of enjoyment of his married life and that he also could not look after his personal business was noticed while assessing compensation. The fact that he had been a good player and his leg had got shortened, was also taken note of by the Tribunal. The appellant had claimed a sum of Rs.75,000/- on account of his treatment, medicines and special diet. It was found by the Tribunal that the appellant had suffered permanent

disability of 40 per cent. It was also noticed that he had undergone a great deal of pain and suffering and his life had been severely affected by this accident. A sum of Rs.30,000/- was, as such, assessed as general damages. Another sum of Rs.15,000/- was assessed as compensation on account of treatment and medicines instead of Rs.75,000/-, as claimed by the appellant. Accordingly, a total compensation of Rs.45,000/- was assessed as reasonable by the Tribunal. Counsel for the appellant has not been able to point out any special feature for me to enhance the compensation awarded in this case. A sum of Rs.45,000/- awarded as compensation on account of the injuries otherwise appears to be just and reasonable. I would, accordingly, uphold this finding of the Tribunal.

As a result of the above discussion, the appellant would now be held entitled to a sum of Rs.45,000/-as compensation instead of Rs.22,500/- as already awarded. Thus, he is entitled to the amount of Rs.22,500/- as compensation in addition to the earlier amount awarded and paid. This compensation has been awarded to the appellant with 12 per cent interest per annum. Having regard to the prevailing situation, I would allow 9 per cent interest per annum on the enhanced compensation, which shall be payable to him on this enhanced amount of compensation.

This appeal is, accordingly, allowed to the extent as stated. Consequently, the cross-objection would stand dismissed.

(RANJIT SINGH)
JUDGE

August 23, 2006

RS